

Lewis Byrd,
Plaintiff,

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Case NO. 17-CV-191-JDP

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PETER OPPELBERG
CLERK US DIST COURT
WD OF VI

v.

Brandon Arenz,
Defendant,

Plaintiff's Brief in opposition of
Summary Judgment.

The above-entitled action is before the court on Plaintiff's motion in opposition for summary judgment. In this matter, Defendant Officer Brandon Arenz, asserts that he did not violate Mr. Byrd's rights under the Fourth and Fourteenth Amendments of the United States Constitution by using excessive and deadly force to effect Mr. Byrd's arrest. There was no high speed chase as Defendant claims, there were no injuries to any officers or bystanders, and those attending a community festival were more than 3.5 mile away and were in no way in any immediate danger, that would cause for the use of excessive or even deadly force. Defendant Officer Brandon Arenz's actions were not constitutionally reasonable as a matter of law under Supreme court and seventh circuit precedent. The court should dismiss Defendants Summary Judgment and set the case for trial.

undisputed facts

On August 13, 2016 officer Brandon Arenz discharged his firearm eleven times at Plaintiff Mr. Lewis Byrd. (Byrd, EX 4 pg. 2 para 6.) Officer Arenz has not had a handgun qualification course since 6.19.14. making him

unqualified to use a handgun. (Byrd, EX. 15, pg. 1.) Officer Brandon Arenz is mandated by the Wisconsin Law Enforcement Standards Board, W.I. Stat. 165.85 to have ANNUAL firearm qualification recertification training and he has failed to do so. (Byrd EX. 14.) On 9.18.16, a month after the shooting of MR. Byrd and the breaking of MR. Byrd's arm, Officer Arenz resigned as a police officer with the Hillsboro Police Department (Byrd EX. 15, pg. 2.) As a result of MR. Byrd's injuries, MR. Byrd had to have reconstructive surgery on his right arm. (Byrd EX. 10.) Plaintiff MR. Byrd did not resist arrest and complied with Officer Arenz's orders so there was no need for Defendant to use such force. (Byrd EX. 9, pg. 6.) Eight of the eleven bullets fired at MR. Byrd by Defendant struck MR. Byrd's vehicle. Several of them in the back window and trunk area. (Byrd EX. 4, pg. 2, par. 7.) One of those eight bullets struck MR. Byrd in the left arm injuring MR. Byrd. (Byrd EX. 9, pg. 6, par. 7.) Officer Arenz was asked by another officer if Defendant had shot MR. Byrd and noticed MR. Byrd was bleeding. (Byrd EX. 9, pg. 3-4, par. 3.) After that Officer Arenz was transported to the hospital due to the fact that he discovered he came into contact with MR. Byrd's blood. (Byrd EX. 9, pg. 5, par. 5.) Officer Arenz advised that he continued firing at MR. Byrd because he was in fear for the safety of a group of people at a tractor pull over 3.5 miles away. (Byrd EX. 4, pg. 2, par. 2 and EX. 5, map.) MR. Byrd did not accelerate his vehicle towards anyone, his vehicle was on a down slope of a hill and rolled forward down the hill under its own power after being rear-ended by Officer Krugers squad. (Byrd EX. 5 and EX. 3, pg. 2, par. 3.) There is conveniently for the Defendant no dash cam video available from Officer Krugers squad to support either parties claims. (Byrd EX. 4, pg. 1, par. 4.) There is no dashcam video of any alleged high speed chase MR. Byrd is said to be involved in. (Byrd EX. 4, pg. 1, par. 4.)

There is no radar of MR. Byrd's speed supporting Defendant's claims that MR. Byrd was traveling 80-90 miles per hour. (Byrd EX. 4, pg. 4, number 6.) There are no medical records for Officer Kruger supporting any injuries to him. (Byrd EX. 4, pg. 5, number 12.) Officer Arenz was not injured, and only went to the hospital because he came into contact with Plaintiff's blood after shooting Plaintiff. (Byrd EX. 9, pg. 5, par. 5.) There are photographs of MR. Byrd's vehicle that display the assault that was placed on him by Defendant Arenz, But Defendant can not produce the photos. (Byrd EX. 4, pg. 2, par. 8.) There is also a list of potential witnesses that Defendant fails to produce (Byrd EX. 7, pg. 1, par. 5.) MR. Byrd denies ever driving at a high rate of speed even at sentencing. (Byrd EX. 1, pg. 2, Sentences 20-23.) MR. Byrd's girlfriend Sagwan Butcher was driving the Red Buick registered to MR. Byrd that police were looking for, and she was arrested for the high speed chase in Union Center in Juneau County WI. (Byrd EX. 2, par. 2-3 and EX. 4, pg. 1, par. 3.) The information given to officers was that the suspect vehicle was a red Buick and that the vehicle was stolen. (Byrd EX. 8, pg. 2, par. 2.) MR. Byrd was driving a 2013 Lexus. (Byrd EX. 8, pg. 3, Item 1.) MR. Byrd was almost rammed by Officer William Zirk and had to drive into a ditch to avoid being hit by the officer. (Byrd EX. 4, pg. 1, par. 4.) There is no dash cam video from Officer Zirk's squad even though it was equipped with a dash camera. It did not have any footage of him ~~attempting~~ attempting to ram Plaintiff's vehicle or as Officer Zirk claims the Plaintiff trying to ram him. (Byrd EX. 4, pg. 1, par. 4.) There are 3-D scans of the scene of the shooting of MR. Byrd, But Defendant fails to again produce the evidence. (Byrd EX. 4, pg. 2, par. 8-9.) There is also no video of the shooting even though dash cams and body cams

were available. (Byrd EX 4, pg. 2, par. 4.) MR Byrd was unarmed and never had any weapon at any time. MR Byrd committed no crimes and was not in any commission of any offences for officers to pursue him as they did. MR Byrd was wanted for a parole violation for failure to keep contact with his probation/parole Agent. (Byrd EX 8, pg. 5, bottom section under charges.) This is not an offence to pursue someone as he did or to use deadly force. The offence MR Byrd was on standard supervised release for occurred in 2005. Excessive and deadly force were not necessary. Officer Arenz ^{who was} ~~not~~ not qualified to use a handgun in the first place had no right to use the force he did on MR Byrd (Byrd EX 15, pg. 1) ~~and~~

Argument

1. Officer Arenz's use of force was not constitutionally reasonable,
 "when an officer believes that a suspect's actions [place] him, his partner, or those in the "immediate" vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force." *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir 1988). However this is not the case in *Byrd v. Arenz*. Defendant does not show any evidence that the plaintiff was the one who caused the threat, other than being wanted for a probation violation for failure to keep contact with his agent. Plaintiff didn't commit any crime. Plaintiff was pulled over on the side of the road and was rear-ended by a pursuing squad car. Officer's fail to produce any dash cam video of the incident, and claim Plaintiff backed into the squad. The Defendant officer Brandon Arenz, says in a statement to investigators that he fired on the plaintiff

continuously because he was in fear for the safety of a group of people over 3.5 miles away at a tractor pull. 3.5 miles away is not in the "immediate vicinity" as stated in *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988.)

If Defendant officer Arenz fired his weapon while the car was driving away from him, he was not in imminent danger of death or serious bodily injury. See *Ellis*, 999 F.2d 247 (7th Cir. 1993)

"when a officer faces a situation in which he could justifiably shoot, he does NOT retain the right to shoot at any time thereafter with impunity." Arenz claims that the citizens he was protecting were 3.5 or more miles away at the time he was firing his weapon as the vehicle was rolling away down the hill. When Mr. Byrd's vehicle was rear-ended by officer Krugers squad it was severely damaged, and was only coasting down the small hill at a very slow pace. Even if there was someone standing within the vicinity of the vehicles path, a reasonable officer may not have concluded that they were in imminent danger, or that the group of people at the tractor pull 3.5 miles away were in ^{the} "immediate vicinity" and in imminent danger.

Because material factual disputes ~~can~~ exist ~~in~~ the excessive force issue, the court must deny Summary Judgment and set the case for trial.

11. Officer Arenz is not Entitled to Qualified Immunity. Arenz was not qualified to use a handgun under WI Stat. 165.85. He was not current on his handgun Annual recertification. Defendant Arenz's last handgun qualification certification was

on 6.19.14. And his police records don't reflect any such training for handgun qualifications since which means Defendant Arenz was not qualified to use a handgun in the line of duty, there for making him not qualified for qualified immunity. Defendant also resigned as a police officer after only 30 days of the shooting. Mr. Byrd was only wanted for a probation violation, for an offense committed in 2005. The force against Mr. Byrd was unreasonable. Deadly force did not have to be used to prevent Mr. Byrd's escape for a probation violation.

Defendant Arenz justifies his use of excessive force by shooting at Mr. Byrd as the vehicle rolled away because he was concerned about the safety of a crowd of people at a tractor pull over 3 miles away. There was no immediate threat to though people over 3 miles away for Officer Arenz to continue firing as Mr. Byrd's vehicle was rolling away from him. (See Byrd's Ex. 5 map)

Officer Kruger after rear-ending Mr. Byrd's vehicle suffered no injuries. Defendant fails to produce any medical record per Plaintiff's discovery request. Mr. Byrd was unarmed and not a suspect in any crime. Although officers tried to justify the shooting and chasing of Mr. Byrd by saying that they thought Mr. Byrd's car was stolen. Officers also mixed up Mr. Byrd's vehicle and the vehicle Mr. Byrd's girlfriend Sagwan Butcher was driving. Both cars are red with tinted windows. Officers were in a high speed chase with the girlfriend's car as the reports indicate and stumbled across Mr. Byrd's vehicle matching the same description and also registered to Mr. Byrd. Mr. Byrd did not pose any immediate

threat. "where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." Tennessee v. Garner, 471 U.S. 1, 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985)

MR. Byrd has met the burden of showing the court that "reasonable minds could differ as to the import of the evidence." In order for him to survive summary judgment.

MR. Byrd ask this court to Deny Defendants motion of Summary judgment. And acknowledge that there is a genuine dispute of the facts and set the case for trial.

Conclusion

MR. Byrd did not lead officers on a high speed chase. There is no evidence of any high speed or even a "chase" except as a matter of figure of speech. MR. Byrd was rear ended by an officers squad car. Defendant fails to produce any evidence to support his claim that MR. Byrd drove in reverse and hit the squad. The shooting of the plaintiff was not constitutionally justified because there was no imminent danger to the people who where at the tractor pull because they were not in the immediate vicinity. They were over 3.5 miles away. As Defendant continued to fire the force he used was excessive. And Defendant had no need to break plaintiffs arm while handcuffing causing MR. Byrd to have reconstructive surgery. Officers Aranz Fire arm qualifications is out dated.

Dated 4/4/18

signed: LGAR